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April 18, 2005

VIA E-MAIL

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: Joint Petition for Limited Waiver of The Direct Marketing Association and  
Email Service Provider Coalition; CG Docket Nos. 04-53 and 02-278

Dear Ms. Dortch:

In accordance with the Commission's *ex parte* rules, this letter provides notice that on Friday, April 15, Jerry Cerasale of The Direct Marketing Association (The DMA), Trevor Hughes of the Email Service Provider Coalition (ESPC), and I spoke over the phone with staff of the FCC, including Jay Kiesly, Erica McMann, and Julie Saulnier to discuss the Joint Petition for Limited Waiver filed by The DMA and ESPC on March 1, 2005. The items discussed included results of a survey of the membership of the ESPC that showed that several of the domains on the FCC's recently effective wireless domain name list established pursuant to the CAN-SPAM Act contain larger quantities of e-mail addresses on the e-mail lists of ESPC companies than other wireless domain names.

The DMA and ESPC indicated that one reason that the numbers for specific domain names in the survey may be greater than other domain names is that these domains may include e-mail addresses that are assigned to DSL or other forms of sending e-mail than domain names that are allocated exclusively for mobile service commercial messages as defined in the CAN-SPAM Act.

In addition, The DMA and ESPC indicated their understanding that the companies that provided data to the ESPC survey were national companies, expressing the understanding that it was reasonable to conclude that the numbers reflected a reasonable national average.



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Additionally, The DMA and ESPC reiterated the preference of businesses that had obtained consent prior to the effective date of the rule to continue to be able to use such consents without having to re-obtain consents pursuant to the Rule's new criteria. The DMA and ESPC indicated their belief that such consents were not obtained in the context of a "negative option," and that any allowance of previous consents could be subject to such a limitation.

If you have any questions, please contact the undersigned.

Sincerely,

 P.   
Stuart Ingis

SI/kap

cc: Jay Kiesly  
Erica McMann  
Julie Saulnier